



Building Excellent Schools Today (BEST) Program

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During the 2008 session, the General Assembly enacted House Bill 08-1335, the Building Excellent Schools Today (BEST) act. The act replaced existing law concerning state financial assistance for public school capital construction and established a grant program in order to accelerate funding for K-12 capital construction. This *issue brief* discusses the origins and administration of the BEST program and funding for BEST projects.

Origins of the BEST program. Prior to 1998, public school capital construction was largely funded from local rather than state sources. A class action lawsuit filed in 1998 changed how the state contributes to K-12 capital construction (*Giardino v. Colorado State Board of Education*). The Colorado Constitution requires the state to "provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of 6 and 21 years, may be educated gratuitously." The lawsuit alleged that the state had not fulfilled its constitutional responsibility to establish and maintain a thorough and uniform system of public schools because of the deteriorating condition of many public schools and issues of overcrowding. Senate Bill 00-181 implemented the terms of a settlement, which required the General Assembly to appropriate \$190 million for public school capital construction over a period of 11 years. In 2008, the General Assembly enacted the BEST act, which replaced the financial assistance programs established pursuant to the lawsuit.

BEST Program

The BEST program was established to provide grants to rebuild, repair, or replace the worst of the state's PreK-12 facilities. The following entities are qualified to participate in the BEST program:

- local school districts;
- charter schools;
- Boards of Cooperative Services; and
- the Colorado School for the Deaf and the Blind.

Capital construction projects qualify for funding and are prioritized in order based on the following criteria: (1) addresses potential safety hazards or health concerns; (2) relieves overcrowding; and (3) incorporates technology into the educational environment. The enacting legislation established a division and staff within the Colorado Department of Education (CDE) to manage the program.

Operation of the BEST program. The BEST program is administered by a nine-member Public School Capital Construction Assistance Board, which includes experts in public school finance and facilities planning. The board is charged with annually submitting a prioritized list of projects recommended for funding to the State Board of Education.

Facility assessment. The BEST act authorized an assessment of the physical condition of the state's public school buildings. Additional money was appropriated beginning in FY 2015-16 to update this assessment and to hire and train CDE staff to maintain and continuously update a priority assessment database. Facility condition information is used when evaluating BEST grant

applications. In 2017, House Bill 17-1082 expanded the facility assessment to include reporting of annualized utility costs and to allow utility cost savings to be identified as a source of matching funds for BEST projects.

Funding for BEST Projects

Two types of grants may be awarded to fund BEST qualified projects: (1) cash awards, including emergency grants; and (2) long-term financing, typically in the form of lease-purchase agreements called certificates of participation (COPs). The source of state funds to pay program costs, make cash grant awards, or to repay the state share of COP lease payments is the Public School Capital Construction Assistance Fund (assistance fund).

Appropriations to the assistance fund. Moneys in the assistance fund are subject to annual appropriation and can be used to pay administrative expenses, COP lease payments, and cash grant awards. The BEST program requires recipients to pay a portion of the cost of a project, unless a waiver is granted. Local cash matches are not appropriated through the state budget, except in the case of a cash match for an annual COP lease payment. Assistance fund revenue accrues from the following sources:

- the greater of 50 percent of the moneys earned each year from state public school lands in the form of income and mineral royalties, excluding interest and investment income, or \$40 million;
- lottery proceeds that would otherwise be transferred to the General Fund;
- the greater of \$40 million or 90 percent of the revenue collected from a tax on the sale of recreational marijuana;
- a one-time \$40 million transfer authorized by the voters through Proposition BB to retain revenue from taxes on the sale of recreational marijuana in FY 2014-15; and
- interest and investment income earned on the assistance fund.

Beginning in FY 2017-18, Senate Bill 16-035 authorized an additional transfer of up to \$10 million a year to the assistance fund from increased interest and income earning on the Public School Fund. The maximum transfer amount increases to \$20 million a year beginning in FY 2019-20.

Figure 1 illustrates the amount of revenue credited to the assistance fund in the last three fiscal years.

Table 1. Assistance Fund Revenue
FY 2015-16 through FY 2017-18

Fund Source	FY 2015-16	FY 2016-17	FY 2017-18
State Land	65,802,073	58,501,081	69,227,578
Lottery	8,070,499	273,562	4,117,403
Marijuana Tax	40,000,000	40,000,000	40,000,000
Proposition BB	40,000,000	N/A	N/A
Interest	2,646,015	4,099,368	6,343,427
Totals	\$156,518,587	\$102,874,011	\$119,688,408

Source: Colorado Department of Education.

*Preliminary year-end estimates.

Use of COPs. For FY 2018-19, the total allowable lease payment amount is \$110.0 million. This cap increases to \$120.0 million in FY 2019-20 and thereafter. The state share of COP lease payments cannot exceed half of the maximum amount of annual lease payments allowed under law. New COP issuances require prior legislative authorization from the Capital Development Committee (CDC). The CDC approved a new issuance in June 2018.

BEST grant awards. CDE reports that to date, the BEST program has funded 319 grants in 135 school districts. Since the program's inception, more the \$1.7 billion has been granted to projects statewide, including district matching funds.